Supreme Court, U.S.
FILED

021103 JAN 15 2003

OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

HEATHER PATRICE HOGROBROOKS,
Petitioner,

V.

PARK PLACE ENTERTAINMENT CORPORATION,
dba
BALLY'S SALOON & GAMBLING HALL,
Respondent

On Petition For a Writ of Certiorari
To the United States Court of Appeal
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Heather Patrice Hogrobrooks
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47 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Fifth Circuit has so far departed from the accepted and usual course of procedures by sanctioning the lower court's departure from procedural process so as to call for an exercise of the Supreme Court's power of supervision where on de novo review of the grant of Summary Judgment, the Appellate Court ignored the facts, circumstances, and stated causes of action in the Complaint and ignored the documentary evidence in the record, and patently did not provide the de novo review required by Rule 56 and refused to address the propriety of the District Court Magistrate's continuous refusal to address the Petitioner's Motions to compel discovery on the basis of a local District Court rule that requires a Certificate signed by all counsels to be attached to the Rule 37 Motion before the Court will address it. As well as whether the Fifth Circuit's decision on these issues conflicts with this Supreme Court's decisions in Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000) and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) and its progenies.

****

2. Whether a Magistrate Judge has the Constitutional authority or jurisdiction to rule on a motion to vacate his or her own reference pursuant to 28 USC 636 where the procedures utilized to procure the reference are challenged because the Reference was procured inconsistently with the requirements in the Statute which are exclusively set forth to insure the voluntariness of the consent.

****

3. Whether 28 USC 636(e) imposes mandatory requirement that facts supporting a magistrate judge's belief that a litigant has committed one of the enumerated acts or conduct defined by the Statute, in this particular instance contempt for tardiness to a hearing is valid, where the

Magistrate imposed sanctions in opposition to the dictates of the cited statute

PARTIES TO THE PROCEEDING

The parties to the Fifth Circuit Court Proceeding are the following:

Petitioner:

Heather Patrice Hogrobrooks

Respondent:

Park Place Entertainment Corporation

dba

Bally's Saloon & Gambling Hall

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OPINIONS BELOW

The Petition for Rehearing En Banc was treated as a Petition for Panel Rehearings and was denied with no member of the panel hearing requesting that the court be polled on Rehearing En Banc.

The appeal of the decision from the United States District Court for the Northern District of Mississippi's Magistrate Judge Eugene M. Bogen was affirmed in an unpublished opinion authored by Judges Higginbotham, Smith, and Clemmons as circuit judges.

JURISDICTION

The Fifth Circuit Court of Appeals entered its order denying Petitioner's Petition For Rehearing En Banc on October 22, 2002. Jurisdiction of this Court is pursuant to 28 U.S.C.§ 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

Federal Rule of Civil Procedure 37 (a)(2)(A)

> "If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The Motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action."

Local Rules 37.1A , Northern District of Mississippi

Good Faith Certification Prior to service of a discovery motion, all counsel shall be under a duty to confer in good faith to determine to what extent the issue in question can be resolved without court intervention. A good faith certificate [=Official Form No. 5] shall be filed with all discovery motions, with a copy to the magistrate judge.

This certification shall specify whether the motion is unopposed, and if opposed, by which party (s) and the method by which the matter has been submitted to the magistrate judge for resolution. The certificate must be signed by all counsel (fax signatures are acceptable). If a party fails to cooperate in the attempt to resolve a discovery dispute or prepare the good faith certificate, the filed motion shall be accompanied by an affidavit by the moving party detailing the alleged lack of cooperation and requesting sanctions.

Federal Rule of Civil Procedure 56 (c)

The motion shall be served at least ten days before the time fixed for hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a

matter of law.

42 U.S.C. 1981

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by White Citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and extractions of every kind, and no other.

Title VII 42 U.S.C. 2000 e-2

(a) It shall unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin: or

(2) to limit, segregate, or classify his employees or applicants for employment in a way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's, race, color, religion, sex, or national origin.

28 U.S.C. § 2072 (b)such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect.

28 U.S.C. § 636 (c)(2)

If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the Clerk of the Court shall, at the time the action is filed, notify the parties of the availability of a Magistrate Judge to exercise jurisdiction. The decision of the parties shall be communicated to the Clerk of the Court. Thereafter, either the District Court Judge or the Magistrate may again advise the parties that they are free to hold consent without adverse substantive consequences. Rules of the court for the reference of civil matters to Magistrate shall include procedures to protect the voluntariness of the parties consent.

Rule 72

(a)Non-dispositive matters. A Magistraate Judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of a Magistrate Judge' order, a party may serve and file objections to the order, a party may not thereafter assign as error a defect in the Magistrate Judge's order to which objection was not timely made. The District Judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the

Magistrate Judge's order found to be clearly erroneous or contrary to law.

28 U.S.C. § 636 (e)

> In proceeding before a magistrate, any of the following acts or conduct shall constitute contempt...Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a Judge of the District Court and may serve or cause to be served upon any person whose behavior is brought into question under this section an order requiring such person to appear before a Judge of that court upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified.

STATEMENT OF THE CASE

Petitioner, a Black female over the age of 39, responded to an advertisement by the Respondent for a Dealer School and was selected. Successful completion of its school allowed the student to audition for a position at one of its casinos. The complete facts are stated in the Petitioner's complaint. Appendix. D. The school was conducted by a husband and wife, both white. During the conduct of the school there were different requirements, procedures, instructions and deadlines applied, depending on the race of the individual. Further, the instructor would answer no questions about the evaluation process and certain requirements and deadlines would come with little notice. For example, about a week into the school, the instructor announced that a math test would be administered and if you failed, one would not be allowed to continue. On the administration of that exam the Petitioner and a white male, who was an architect, were the only two to pass the exam.

After which, the instructor stated he would re-administer the test to those individuals who failed one and/or both parts of the test, yet he still would provide no information about what was required to pass, or the propriety of allotting the same amount of time to individuals who had to retake one as opposed to both parts of the test.

The result of the different treatment of Black students as opposed to White students was that all Black males were eliminated with the exception of one who was a pre-existing employee of long standing and five Black females -- the Petitioner who has a J.D.; a second year medical student, 2 others with significant higher education and significant, responsible work experience; and one that came to the class with existing dealing knowledge and skills. Not a single White student failed the school. Utilizing the EEOC calculations those class results were unlikely to occur absent racial animus.

Petitioner discovered that some of the school participants would be allowed to audition at the Respondent's Grand Casino as opposed to its Bally's Casino which represented a difference of between $5 to $8 dollars per hour at that time. The instructor was very evasive when asked about being allowed to audition at the Grand Casino. Petitioner took her questions about auditioning to the Personnel Office wherein they, too, were evasive, alleging no knowledge to the Petitioner. The Petitioner discovered that no Black from the school was allowed audition at the Grand Casino for those positions, but three White males from the school were permitted, and were hired thereat.

Petitioner was terminated for uncooperative behavior at the request of a supervisor who told her that if she would be friendly to the guests, she should be a casino host, to which she responded that he should not be supervising people.

This was also the Respondent's supervisor that the Petitioner complained about, his deplorable treatment of a Black male guest in a mandatory meeting with the table games' manager prior to her being disciplined. After that complaint, that supervisor always had something unpleasant and irritating to say to the Petitioner. Petitioner, too, set forth in her complaint that the Respondent's claim of uncooperative behavior as a basis of termination was a pretext as the Respondent had not fired employees that tested positive for drugs, including a pit boss who worked the Petitioner's shift , walked off the job, etc.

The complaint was formally filed on January 26, 2001 alleging causes of action mentioned above, as well as other retaliatory acts by the Respondent. The matter was immediately assigned to a magistrate who took jurisdiction and entered orders prior to athe Petitioner's signing the 636 waiver. In fact, the waiver was not sent to the Plaintiff by the Clerk of the Court as required. The consent was filed on June 7, 2001. Petitioner's amended complaint was filed on June 27, 2001 which alleged the post employment retaliation claim, a defamation claim, and a COBRA claim.

The Petitioner filed many requests for discovery, and when Respondent failed to substantively answer, she filed Rule 37 motions including in each the certification required by FRCP 37 (a)(2)(A). The magistrate judge denied each because the Petitioner did not attach the certificate required by local rule 37.1 A which had to be signed by all counsels.

The Petitioner in response filed a Rule 72 Motion objecting to the magistrate's denial of her motions to compel discovery. When the Petitioner was told that the 28 U.S.C. 636 waiver she signed placed the entire matter exclusively in the hands of the magistrate, the petitioner then filed a motion to vacate the reference which the magistrate judge denied.

The magistrate's chambers are in Greenville, Mississippi as opposed to Oxford, MS., the venue in this matter. He set a settlement conference, the Petitioner traveling from Memphis, TN on the drive to the hearing realized that she would be a little late, about 30 minutes. Petitioner called the court, prior to the set time of the hearing, told it of her distance from Greenville, and the town she was calling from. When the Petitioner arrived, the first thing the magistrate judge said to her was that he was imposing sanctions against her because the Respondent was not paying its attorney to wait on her. He then directed Respondent's counsel to file a fee and cost statement.

Respondent on or about February 8, 2002, filed a motion for leave and to serve its motion for summary judgment. The motion deadline in this matter had been December 17, 2001. The Petitioner had received a copy of those pleadings. The Pretrial information sheets were due the magistrate at that time, thus the Petitioner in the cover letter to the pretrial information sheet acknowledged her receipt of the pleadings, and informed the magistrate that the motions she had received were unsupported by pleadings, and thus she would rely on the operation of normal summary judgment law, but if the pleadings received by the court were supported, the Petitioner would like an opportunity to respond.

The magistrate judge on March 1, 2002, granted the Respondent's motion for leave to file its summary judgment, and on March 6, 2002, granted the Respondent's motion for summary judgment on all claims.

The only claim of discrimination set out in the magistrate's Summary Judgment ruling was a claim that the Petitioner did not make, and the discipline stated therein

triggering the termination of the petitioner was wrong. The Petitioner never alleged that she was termination for insubordination and replaced with a White person.

Petitioner appealed to the Fifth Circuit Court of Appeals pursuant to 28 U.S.C. 1291 raising four points of error:

> I.
>
> The magistrate erred as a matter of law in granting summary judgment on the ground that she pled herself into summary judgment as well as violated her constitutional rights to procedural and substantive due process by entering judgment six days after granting defendant leave to file its motion for summary judgment.
>
> II.
>
> The magistrate erred as a matter of law, as well as abused his discretion in denying the Appellant's many timely motions to compel discovery, for non-substantive reasons, like failure to attach a good faith certificate required of attorneys by local rules where no such requirement is contained in the Federal Rule of Civil Procedure 37, and where said requirement as applies violates the dictates of 28 U.S.C. 2072 (b).
>
> III.
>
> The magistrate erred in failing to vacate the reference to proceed before a magistrate judge

where his assignment was made upon filing the case and jurisdiction was exercised by him months to the signing of the consent form as said could not be deemed voluntary where on its execution came pursuant to procedures contrary to those stated in 28 U.S.C. 636 (c)(1) and (2) and the rights, safeguards, and procedures stated thereon the consent from and where jurisdiction to rule on the question of reference is vested in an Article III judge.

IV.

The magistrate judge abused his discretion and violated appellant's rights to due process by the manner of the imposition the sanctions against her for being late notice to a settlement conference as well as may have been without jurisdiction to punish her for tardiness pursuant to 28 U.S.C. 636(e).

The Court of Appeals opinion provides no review of the petitioner's 1981 and Title VII claims. It does state the correct reason given by Respondent for terminating the Petitioner but includes an insinuation that the Petitioner had multiple disciplinary problems. Other than that it does nothing more than chastize the Petitioner for arguing that a basis for reversal of the summary judgment was the magistrate not providing 10 days notice that he was going to grant the Respondent's Motion for Leave and enter Summary Judgment.

In fact, the majority of the Appellate Court's rationale for deciding the Summary judgment issue and the sanction issue was from a transmittal letter the Petitioner sent the magistrate judge. The Fifth Circuit refused to address the

discovery issue and the issue regarding the 28 U.S.C. 636 referral. It should be noted that the Respondent requested an extension of time to respond in the Fifth Circuit and was granted that time over the Petitioner's objections based on the Fifth Circuit's own rules guiding the grant of an extension of time. During this time it moved that the Petitioner's transmittal letter be included in the record.

REASONS WHY CERTIORARI SHOULD BE GRANTED

SUMMARY JUDGMENT

A cursory review of the Fifth Circuit's decision (App. B) and the Petitioner's Complaint (App. D) will show that de novo review was not provided. The Petitioner in a 13-page Complaint setting out both the statutory and decisional authority for her Complaint, and facts and circumstances in support of the Complaint. However, nowhere in the Fifth Circuit's discussion of the Summary Judgment ruling will you find the words "disparate impact, intentional discrimination, retaliatory conduct, prima facie case, 1981, Title VII, pretext, etcetera, or any of the facts and circumstances the Petitioner alleged in her Complaint. In fact, the Opinion simply smooths over the District Court Magistrate Judge's decision by stating the correct summary judgment standard as opposed to the "pled herself into summary judgment" standard announced in the District Court's Opinion, and corrects the reason for the Petitioner's termination where the District had it wrong.

It clearly appears that the only items utilized by that reviewing court was the District Court Opinion (App. C) and a letter from the Petitioner to the Magistrate Judge. App. E.

Therefore, that being the case, the Appellate Circuit

Court has so far departed from the accepted and usual course of procedures such that this court should exercise its power of supervision. Because, Petitioner alleged federal claims arising under 42 U.S.C. 1981 and 2000e-2. This court in Reeves versus Sanderson Plumbing Products, Inc., 530 U. S. 133 (2000), in analogizing the standard of review of Rule 50 to that of Rule 56, stated that the court must review all evidence in the record and review that evidence as a whole. While Reeves won at trial, the Fifth Circuit reversed. Therein as here with the Petitioner, the Fifth Circuit ignored the evidence in the record supporting the Petitioner's contentions. It seems that at a minimum the Opinion should have contained a discussion of the Respondent's evidence which it felt overcame the Petitioner's prima facie case.

Further, the grant of Summary Judgment was given to the Respondents without providing the Petitioner 10 days to respond. Respondent was granted leave to file on March 1st of 2002, and judgment was entered on March 6, 2002. The letter utilized by the Court of Appeals in affirming the Magistrate Judge clearly states that she wished to have the opportunity to respond if the Respondent's motion was supported, because she knew the state of the record did not at all support even the filing of a motion for summary judgment.

DISCOVERY

The same sort of procedural deviation and denial of due process came by way of the Fifth Circuit not addressing the Petitioner's discovery issue. Petitioner was effectively and substantively denied discovery in that without Petitioner being allowed meaningful discovery, summary judgment was improper.

Petitioner filed Rule 37 motions consistent in all

respects with the requirements of that Rule. After each discovery query the Respondent refused to answer. The magistrate denied the Petitioner's Rule 37 motions because they were not consistent with Local Rule 37.1A which requires that an official form of the District Court, signed by all counsel, be attached to the Rule 37 motion before the motion will be considered.. That question posed to the Fifth Circuit was very pertinent and important question to the determination of the propriety of even considering summary judgment as Rule 56 only allows summary judgment after adequate time for discovery, among other things. Celotex Corp. v Catrett, 477 U.S. 317 (1986).

Additionally, the Fifth Circuit, not reversing the lower court on the basis of its failure to allow 10 days for the Petitioner to respond before granting summary judgment was inconsistent with
Rule 56 as well as the Fifth Circuit's own decisional law. N.L. Industries, Inc. v. GNK Energy Corp., 940 F.2d 957 (5th Cir. 1991), Judwin Properties, Inc. v. United States Fire Ins., 973 F. 2d 432 (5th Cir. 1992).

Further, because the magistrate's application of Rule 37.1A, denied the Petitioner having her motion pursuant to FRCP 37 considered by the district court, it is an extremely important quetion of grave public importance as to whether that process violates 28 U.S.C. 2072 (b), which restrains the operation of procedural rules that affect substantive rights.

SANCTIONS

The Appellate Court did not set out the facts truthfully and fairly in its discussion on the sanctions that the magistrate had imposed against the Petitioner for being late to the settlement conference. Its entire recitation of the facts on this issue are either misleading and/or ignored.

The Magistrate Judge had notice that the Petitioner was going to be late prior to the time set for the conference to begin. When she did appear, the first thing that the Magistrate said to her was that he was imposing sanctions. Petitioner argued to the Fifth Circuit that said imposition of sanctions was an abuse of discretion as well as without the jurisdiction of the Magistrate considering the dictates of 28 U.S.C. 636 (e). That statute provides that the Magistrate has to certify to a District Judge the facts which he believes support contempt by a federal litigant before him.

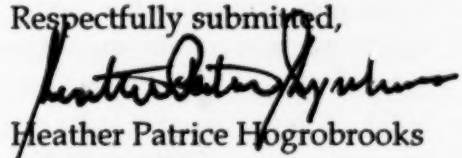
CONCLUSIONS

The form of this matter as it is presented to this Court, on the brief portions of the record found in the appendix and the associated opinions found below clearly show this Court that it presents important public issues. Petitioner does not believe that she is the only federal litigant to be summary judged out of federal court on the quality of record facts and Appellate Court Opinion presented in this writ. That state of affairs in a country such as ours that values procedural due process should be shocking and intolerable. It is also important to mention the unfairness and wrongness in taxing a federal court litigant with costs and fees on appeal where they have not received the meaning review expected and required by the rules.

Petitioner prays that this, my court of last resort, will grant her the writ she requests rendering therewith an opinion with regard to Rule 56 and the Constitutional Right to due process as it did with regard to Rule 52 and the First Amendment in Bose Corp. v. Consumer Union of U.S., 466 U.S. 485 (1984). Therein, the language in that decision

unequivocally and directly states to Appellate Court judges the Constitutional responsibility of independent review to that First Amendment question.

Respectfully submitted,



Heather Patrice Hogrobrooks
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IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02 - 60229

HEATHER PATRICE HOGROBROOKS

Plaintiff - Appellant

v.(U.S. COURT OF APPEALS
FILED OCT 22 , 2002
BALLY'S OLYMPIA L P Charles R. Fulbruge III
Clerk)
Defendant – Appellee

Appeal from the United States District Court for the Northern District of Mississippi, Oxford

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ON PETITION FOR REHEARING EN BANC
(Opinion 9/16/02, 5 Cir., _____, _____ F.3d_____)

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:

(x) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

Entered for the court:

E. B.. Clemery

s_____

United States Circuit Judge

CLERK'S NOTE
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

REHG - 6a

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02-60229
Summary Calendar

HEATHER PATRICE HOGROBROOKS,

Plaintiff - Appellant,
versus

BALLY'S OLYMPIA L P,

Defendant - Appellee.

Appeal from the United States District Court
For the North District of Mississippi
(No. 2:01-CV-22-EMB)

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM*:

Heather Patrice Hogrobrooks (Hogrobrooks) sued Bally's Olympia LP (Bally's) for racial discrimination arising from termination of her employment with Bally's as a part-time blackjack dealer, in violation of both Title VII of the Civil Rights Act of 1964 and 42 U.S.C. par 19981. Hogrobrooks also alleged Bally's mandatory Mississippi Gaming Commission filing regarding her termination was per se defamation, and further

alleged Bally's violated the notice requirements of the Consolidated Omnibus Budget Reconciliation Act (COBRA). With the consent of both parties, the matter was referred to a magistrate judge for decision pursuant to 28 U..C. § 636(b) (4), Fed. R. Civ. P. 73, and Uniform Local Rule 73.1. The magistrate judge granted summary judgment in favor of Bally's on all issues. Hogrobrooks attempts to appeal the grant of summary judgment on substantive and procedural grounds, denial of various discovery rulings, reference to a magistrate judge, and imposition of sanctions resulting from unexplained tardiness to a court-ordered settlement conference. After a review of the record, we affirm.

I. Facts and Procedural History

The undisputed facts underlying the present appeal are as follows. Hogrobrooks was hired by Bally's as a part-time blackjack dealer in June, 2000. On July 23, 2000, Hogrobrooks received a verbal warning after she was told to pick up a player's cards but refused the instruction and talked back to her supervisor. On September 26, 2000, after further warnings and problems, Hogrobrooks employment with Bally's ended with her unfavorable termination for uncooperative behavior.

Plaintiff brought suit in federal district court and a magistrate judge was assigned to handle pretrial, non-dispositive matters. The parties eventually consented to the referral of this cause for trial by the magistrate judge and it was so ordered by the district court judge. During the course of the proceedings below, the magistrate judge dnied several of Hogrobrooks discovery

motions and two motions to vacate the order of reference. The magistrate judge also sanctioned Hogrobrooks for arriving forty-five minutes late to a court-ordered settlement conference.

On February 11, 2001, after the deadline for motions in the case, Bally's petitioned the court for leave to file a motion for summary judgment and attached a proposed motion for summary judgment. On February 17, 2001, prior to a ruling on the motion, Hogrobrooks mailed correspondence to the magistrate judge informing the court she would not be responding to Bal ly's summary judgment motion. The magistrate judge thereafter permitted filing of the summary judgment motion and subsequently granted the motion on March 7, 200001 (sic) with a clerk's entry date of March 11, 2001.

II. Discussion

Appellant raises a litany of potential issues on appeal but ultimately only presents two issues with sufficient legal analysis to warrant consideration by the Court. First, Hogrobrooks argues the magistrate judge erred procedurally by entering summary judgment. Second, Hogrobrooks argues the magistrate judge abused his discretion in sanctioning her for an unexplained tardy appearance at a court-ordered settlement conference.

A. The Summary Judgment Ruling

Whether the district court correctly implemented the Federal Rules of Civil Procedure regarding summary judgment is

a question of law that this Court reviews de novo review. Bellaire Gen. Hosp. V. Blue Cross Blue Shield of Mich., 97 F.3d 822, 826 (5th Cir. 1996).

Bally's motion for summary judgment, though included with Bally's February 11, 2001 motion for leave to file summary judgment, was not permitted to be filed until March 1, 2001. The court granted summary judgment soon afterward on March 7, 2001. Hogrobrooks believes the court's rapid ruling robbed her of the time to respond and cites Judwin Properties, Inc. V. United States Fire Ins. Co., 973 F.2d 432 (5th Cir. 1992) for the proposition that a district court can enter summary judgment *sua sponte*, provided the Court gives ten days notice to the adverse party. Hogrobrooks does not explain why a case discussing rules for granting summary judgment *sua sponte* is relevant to this case, where the court below had before it a motion for summary judgment.[1] Nor does she explain why the plain language of the Federal Rule should not apply. "The judgment sought *shall be rendered forthwith* if the pleadings ... show there is on genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R Civ. P. 56(c) (emphasis added).

B. Sanctions

The imposition of sanctions by the district court is reviewed for abuse of discretion. Where the basis for sanctions is tardiness, the Court looks to counsel's justification for tardiness. In re Greene, 213 F. 3d 223, 225 5th Cir. 2000) ("When an attorney fails to appear or makes

[1]Even were this a *sua sponte* case, Bally's has a persuasive argument that the goal by Judwin was satisfied in this case, Judwin is premised on the desire to allow parties adverse to a motion for summary judgment the opportunity to make their case to the court before a ruling on the motion. Hogrobrooks informed the court of her intention not to respond to Bally's summary judgment motion before the court even granted leave to Bally's to file for summary judgment.

a delayed appearance, however, the conduct which is subject to sanction is not the absence itself but the failure to provide sufficient justification for the absence or delay.")

On January 28, 2002, Hogrobrooks appeared forty-five minutes late to a court-ordered settlement conference. Bally's requested sanctions against the Plaintiff for her tardiness on this occasion, and noted plaintiff's previous truancy from her own duly noticed deposition. In her February 17, 2002 letter to the court, Hogrobrooks declined to respond to the motion for sanctions. The magistrate judge granted the motion. Only after sanctions were imposed did Hogrobrooks file an objection to the order and explain that her tardiness was based upon a miscalculation of travel times. The magistrate judge deemed this submission as a "motion to reconsider" and denied it.

By not objecting to the motion for sanctions, Hogrobrooks waived her claim on appeal that the magistrate judge abused his discretion when he initially ordered sanctions. On the related question of whether the magistrate judge abused his discretion

when denying the motion to reconsider, Hogrobrooks has failed to provide any support for her position. Instead, she cited cases discussing either Rule 11 sanctions or the inherent power of the court to sanction in the absence of statutory authority. This Court declines to rule the magistrate judge abused his discretion in denying Hogrobrooks' motion in the absence of relevant and persuasive precedent to the contrary.

III. Conclusion

For the reasons stated, this Court affirms the district court's judgment.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

HEATHER PATRICE HOGROBROOKS, Plaintiff

vs. No. 2:01CV022-EMB

BALLY'S OLYMPIA, LP, Defendant

OPINION

Defendant moves for summary judgment on the ground that plaintiff has pleaded herself into summary judgment. Plaintiff has responded by letter that she will not formally respond to the motion because her pleadings speak for themselves.

The parties in the above entitled action have consented to trial and entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. §636 (c), with any appeal to the Court of Appeals for the Fifth Circuit.

FACTS

Plaintiff is a former attorney licensed to practice in Arkanas whose license was suspended and who was trained for and worked as a black jack dealer at Bally's Casino beginning June 20, 2000 until her termination for insubordination on September 26, 2000. Her original complaint is a long, whining, mostly incoherent diatribe wherein she complains of virtually every aspect of defendant's operations beginning with her training at dealer's school through every level of management and supervision. Plaintiff admits her insubordination of ¶¶ 39-41 which is confirmed in Exhibit H to the complaint. She refused an order by her supervisor and talked back to him for which she was fired.

CLAIMS UNDER 42 U.S.C. §1981 AND TITLE VII

In her first complaint plaintiff alleges causes of action arising under 42 U.S.C. §1981 and Title VII. Although she alleges to have filed a charge with the Equal Employment Opportunity Commission, as required to pursue a Title VII claim, the charge attached to her complaint does not appear to have been filed. (Exhibit G). There is no charge number, and more importantly, not right-to-sue letter. As the defendant correctly notes in its brief, the filing of an EEOC charge and the issuance of a right-to-sue letter are mandatory before filing suit under Title VII. See Velma v. Eureka Company, 281 F. 3d 458 (5th Cir. 2000). Plaintiff alleges that she received a right-to-sue letter, but contends that she misplaced it. Plaintiff has the burden of proving the jurisdictional

prerequisites to filing suit in federal court in Title VII cases. Cutliff v. Greyhound Lines, Inc., 558 F.2d 803, 806 (5th Cir. 1977). Given that plaintiff has supplied a charge form with no number or other indication that it was ever filed and no right-to-sue letter, the court finds that she has failed to carry her burden with regard to administrative exhaustion, and that her Title VII claims must be dismissed.

Insofar as plaintiff purports to state claims under 42 U.S.C. §1981, there is no administrative exhaustion requirement, but the elements of a claim for employment discrimination are the same as if the claims were brought under Title VII. See Scarlett v. Seaboard Coast Line RR Company, 676 F.2d 1043, 1053 (5th Cir. 1982).

In order to establish a prima facie case of discriminatory discharge under Title VII/§1981, plaintiff must show: (1) she is a member of a protected class; (2) she was discharged; (3) she was qualified for the position from which he (sic) was discharged; and (4) that she was replaced by a member of an unprotected class. Faruki v. Parsons, 234 F. 3d 315, 318 (5 Cir. 1997).

Plaintiff is a black female, she was discharged, and there appears to be no question about her qualifications to deal black jack at the casino. In her complaint at ¶46, she claims that "defendant has hired at least one white person as a dealer whom (sic) (sic) had no experience as a dealer and [sic] not been through a dealer school." Plaintiff does not allege that this one white person

replaced her specifically, but the court will, for purposes of this motion, assume that the person did replace her, and that plaintiff has made a prima facie case of discrimination.

Once the plaintiff has established a prima facie case of discrimination, the burden of proof shifts to the employer to produce evidence that the plaintiff was fired for a legitimate reason. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). Here, plaintiff admits in her complaint to the insubordination that resulted in her termination and has attached the employer's rendition of the events which she signed as an exhibit to her complaint. Since the employer has offered a legitimate reason for firing the plaintiff, she must prove by a preponderance of the evidence that the reasons given by the employer were not true, but were a pretext for discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507-508. As noted previously, plaintiff offered nothing in response to the defendant's motion, and instead relies alone on the pleadings she has filed, which admit to the insubordination for which she was terminated. As the numerous cases cited by the defendant in it's (sic) brief hold, insubordination is a legitimate ground for termination. See Defendant's Brief, p.4. Plaintiff has fallen out of court on this claim.

DEFAMATION

In her First Supplemented and Amended Complaint, plaintiff adds a state law claim for defamation which she contends arose when the defendant notified the Mississippi Gaming Commission of her termination on October 5, 2000, and a non-

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specific claim that the defendant violated the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Plaintiff admits in her supplemental complaint at p. 2 that the Notice of Employee Termination Form requires that it be filed with the Gaming Commission within 72 hours of termination. Miss. Code Ann. §75-76-131 directs the Executive Director of the Mississippi Gaming Commission to "[a]scertain (sic) and keep himself (sic) informed of the identity, prior activities, and present location of all gaming employees in the State of Mississippi . . . ." Obvious, this directive reuires the Commission to be apprised of the termination of said employees, and clearly applies to "all gaming employees." Plaintiff has failed to allege how compliance with this statutory directive constitutes discrimination. Further, while plaintiff may contend that the reasons for her termination were

pre-textual, she does not deny the truth of the allegations of insubordination which were set forth in the notice of her termination, and truth is an absolute defense to a defamation claim. There is no merit to this claim.

COBRA

Plaintiff makes the vague claim that the defendant failed to provide her with notice of how she may continue health coverage following her termination, but she has offered no proof nor does she allege that she ever obtained health coverage during the three months whe was employed by the casino. This claim, too, should be dismissed.

Consequently, the court finds that defendant's Motion for Summary Judgment should be GRANTED, and all of plaintiff's claims against it should be dismissed with prejudice.

A separate order in accordance with this opinion shall issue this same date.

THIS, the 6th day of March, 2002.

s/W. U. bogen

UNITED STATES MAGISTRATE JUDGE

DUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

HEATHER PATRICE HOGROBROOKS,
Plaintiff,

vs. CAUSE NO. 2:01 CV 022

PARK PLACE ENTERTAINMENT, DBA:
BALLY'S SALOON & GAMBLING HALL,
Defendant

COMPLAINT AT LAW

1. This action is brought pursuant to 42 U.S.C. 1981 as amended by the Civil Rights Act, which is cognizable for the redress of individual racial discrimination, Title VII of the Civil Rights Act of 1964 that makes cognizable discrimination in employment, retaliatory treatment, and hostility in the work environment.

PARTIES

2. The plaintiff at all times material was a citizen of the United States, female, black, and over the age of 39.
3. The defendant is Parkplace Entertainment, Inc., owner and operator of Bally's Saloon and Gambling Hall. The conduct made the basis of this lawsuit occurred in Tunica County, Mississippi. The defendant is being served by serving its president and CEO, Auther M. Goldberg at 3930 Howard Hughes Parkway, Las Vegas, Nevada 89109.

LAWFUL AUTHORITY FOR THIS CAUSE OF ACTION

This action is premised on 42 U.S.C. 1981, which provides for redress of racial discrimination in employment. The making, performance, modification, termination, enjoyment of all benefits, privileges, terms, and conditions are cognizable conduct pursuant to 42 U. S. C. 1981 as amended by the Civil Rights Act of 1992

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4. Employment at will contracts are cognizable under 42 U. S. C. 1981. Byers v. The Dallas Morning News, No. 99-10554 (5th Cir. 4/24/2000).

5. Adverse employment actions [cognizable under 42 U. S. C. 1981] are discharges, demotions, refusals to hire, refusals to promote, and reprimands. Pierce v. Texas Dept. of Criminal Justice, Inst., div., 37 F. 3d 1146 (5th Cir. 1994).

6. Different responses to substandard performance or misconduct based upon the race, sex, national origin, religion, age, or disability of the actors is facial discrimination, and is not justified simply because there is good cause to discipline the particular worker. McDonald v. Santa Fe Trail Transp. Co., 427 U. S. 273 (1976)..

7. Discipline that differs along class lines must be based on relevant differences in the conduct, culpability, or work history of the employees involved. Green v. Armstrong Rubber Co., 612 F.2d 967 (5th Cir. 1980).

8. The prima facie cause for unlawful retaliation is (1) protected Title VII activity; (2) adverse employment action, and (3) a causal link existing between the protected activity and the adverse employer action. Grimes v. Texas Dep. of Mental Health and Mental Retardation, 103 F.3d 137 (5th Cir. 1996).

9. Defendant has to offer legitimate non-discriminatory reasons for the employee's termination. McDonnell Douglas Corp. v. Green, 411 U. S. 792 (1973).

10. Plaintiff must show that proffered reasons are mere pretexts. Texas Dept. of Community Affairs v. Burdine., 450 U. S. 1253 (1981).

11. The fact finder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) together with the prima facie case, suffice to show intentional discrimination. St. Mary's Honor Ctr. v. Hicks, 509 U. S. 502 (1993).

FACTUAL HISTORY

13. The plaintiff's association began with the defendant on or about May 8, 2000 when she began its blackjack school.

14. During the course of its school, [plaintiff observed] several seemingly unfair and inconsistent procedures and actions with regard to [employee relationships with] the students. These inconsistencies resulted [in a loss of the majority of the black students being trained], and none of the white students. White students were also given the opportunity to audition at the Grand Casino which offered higher net wages as compared with the Bally casino.

15. Plaintiff raised questions to the instructor as to the procedures and criteria for competing for higher paid positions as well as arbitrary procedures being employed in the conduct of the class which resulted in the loss of black individuals. The questions remained unaddressed.

16. At the conclusion of the class and prior to plaintiff's audition at Bally's, she visited the personnel office to see if her questions could be answered there. She was given the name of someone to call outside of personnel.

17. Immediately following Plaintiff's audition, she was directed to speak with the table games manager, Adolph Lepre, who discussed her desire for the position, and his concern for her happiness therein within the context of the questions plaintiff raised, although the manager never addressed those questions with plaintiff.

18. Plaintiff's employment began on June 20, 2000 as a dealer on the 4:00 a.m. to 10:00 p.m. shift. Her first day of work was June 22, 2000. During the processing in personnel, plaintiff requested whether the defendant had an Equal Employment Opportunity Officer. She was given the name of Mr. Peter Burns, who is also the general manager. Plaintiff wrote a letter to Mr. Burns delineating her experiences and concerns of discrimination and how Mr. Lepre attempted to dissuade her from taking the position. That letter is attached herein as Exhibit A and is incorporated as is set forth verbatim. Mr. Lepre never responded to the letter even to note that he was not the appropriate person to address.

19. Plaintiff did receive a recorded message from Jeanette Kirk

Hall directing that plaintiff meet with her in her office at Bally's on the plaintiff's scheduled day off if plaintiff desired to further discuss this matter.

20. Plaintiff at all times during her employment had superior appearance, superior guest relationship skills, superior professional interaction with guests and other non-abusive employees, as well as competitive dealing ability. She was never either absent nor late.

21. Plaintiff has never had any unpleaant exchange with the majority of defendant's supervisors nor any other defendant employee. In fact, many of the defendant-personnel and employees, and particularly the waitresses , the majority of whom were white, commented on plaintiff's superior personality and professionalism.

22. During a luncheon on the day of orientation, the initial schedules were handed out. It was brought to the plaintiff's attention by another black female just our of dealer school (who was no longer an employee at Bally's)that the white female who worked in my particular capacity had been scheduled for more workdays than I was provided. Plaintiff brought the situation to Mr. Lepere's attention, who brushed off the incident. Plaintiff does not recall with whom he stated was the appropriate person to whom I should voice my concerns. The schedule Plaintiff received is attached as exhibit 8 and is incorporated into this complaint as if fully set out,

23. During the next scheduling period, Plaintiff observed that the same white female had consecutive workdays and consecutive off days. Plaintiff sent the defendant Exhibit C, Plaintiff's schedule, and received about a week later what is marked Plaintiff's Exhibit D, the schedule of the White employee. Both are incorporated into this Complaint verbatim.

24. Plaintiff enjoyed the work immensely; however, a persistent few of the defendant's supervisory personnel continued to persist with rudeness, insulting hostilities, and exhibited overall demeanors which conveyed hostile and humiliating intentions to Plaintiff. For example, if you call upon them for direction about something in the game, you

were often met with "didn't they teach you that in school." favorite of the white supervisor named Gary. Or, "what do you think?" Favorite of the black supervisor named Gary. There were also a few incidences where particularly the white Gary was embarrassingly rude to black guests.

25. Sometimes in early July, Mr. Lepre held a mandatory meeting. During that meeting, Plaintiff informed Mr. Lepre of the rude and insulting manners of a few of his supervisors.

26. Plaintiff also related to him an incident, probably a week earlier wherein a black man, plant supervisor visiting with his wife form Flint, Michigan was horribly treated by the white Gary. The gentleman was on the table by himself. This supervisor placed himself directly beside Plaintiff and at cross-hairs to the guest and stared the gentleman down. After about five hands, the gentleman stated, "I am not stealing anything here." This supervisor's response to the man was basically that if he did not like it, he could leave. After a couple of more hands, that supervisor finally did leave the table.

27. Mr. Lepre said that he recognized that his people needed some professional development, and for us to run and tell their immediate supervisors when situations occur. There are many instances of outright rudeness, unfair or unethical behavior toward black patrons, inebriated patrons, or patrons for whom English was a second language.

28. Plaintiff's first personnel action came shortly after this meeting. A patron by the name of Cindy, who is also a floor supervisor at the Horseshoe Casino was in with her husband. Cindy was at Plaintiff's table, a little inebriated, but involved in the game. Upon her requesting her last hit, she ran to the crap table where her husband was, and which was directly in front of the table where Plaintiff was assigned. Plaintiff continued and revealed the house's hand, and pulled additional cards. The house's hand was over 21. The patron had been getting decent hands, but the dealer's hand was beating her by one. In fact that was her last bet and she had gone to get money from her husband. The black Gary came from behind and to the right of

Plaintiff and said, "Pick up the cards." Plaintiff responded, "The guest has not seen the dealer's hand." No response came from that information. Plaintiff called, "Do you still want me to pick up the cards?"

29. Cindy returned. Cindy thought she had double-down, but was not insistent, angry, irritated; just drunk. Surveillance was called to verify the play. Cindy play awhile longer. When she finally left the table, the white supervisor named Laurie came to the table and started a tirade, repeatedly stating that "When told to do something, just do it." Plaintiff asks to speak with the supervisor she thought had the ultimate responsibility. She told the Plaintiff that she did not need to talk to anyone else.

30. Plaintiff was dumb-founded by this overaction, and failure to distinguish refusal from information. At her break she spoke to whom she believed to have ultimate responsibility. He was white, and referred to "Auggie." While relating the incident, Laurie appears. She was calmer. He simply listened and nodded.

31. At the end of her shift Plaintiff was directed to go to the table game office. Waiting there was Laurie (white female) and Kevin (white male). Gary, the black supervisor, was not involved. Exhibit E is the disciplinary action notice and Plaintiff's response. Exhibit E is incorporated in this complaint as if set forth word-for-word. Therein Laurie mentioned that she told Plaintiff that she did not need to talk to anyone else. Kevin asked, whom did the Plaintiff think she was to demand she speak with them.

32. Plaintiff formally responded with a letter to the Director of Human Resources and copy to Mr. Phillip Lepre. Said is attached as Exhibit F and is incorporated into this document as if set forth word for word.

33. Plaintiff then filed a complaint with the EEOC. Said is attached as Exhibit G and incorporated into this pleading as if set forth word for word. On information and belief, the response filed with the EEOC indicated that the black supervisor took the action that Bally's had to pay the patron's wife.

34. Pursuant to Plaintiff's letter to the Human Resource Director, she met with her. The majority of the time was spent in a round-robin discussion about the definition of insubordination and whether said definition was delineated in any materials provided the Plaintiff. The Director, finally hearing the absurdity of her argument that my conduct could be deemed as insubordination finally stated that the black Gary had filed a supplemental report stating that the Plaintiff had responded, "No" to his director that the cards be picked up. At that, Plaintiff simply smiled and stated that a lot of time could be saved, that "No" is an unambiguous word of refusal had it been stated.

35. After this, Plaintiff had little to no contact with those individuals. She started taking her breaks in her vehicles or behind the casino.

36. Over the two-weeks period preceding my termination, the white Gary became my constant nemesis. Discourse has ranged form him telling Plaintiff she carries on too much "useless chatter;" that if she wants to talk to the guests, she "should become a casino host." If she knew whom she worked for as she appears to happy for the guest when the win a hand; and that she was stupid. Plaintiff has responded requesting whether any guests have complained. Response, "No;" Why is it enough for you to have happy people losing their money; why are you trying to make this job miserable and to read the Bell Curve, and he would understand why she's stupid.

37. This supervisor does not talk to white employees in this manner. For example, the stupid and "Bell Curve" exchange occurred when she had just relieved James, a white male, for a break. She had not even looked down at the rack. He walks over and states, "Didn't they teach you in school how to fix your rack?" Plaintiff, "What are you talking about?" Gary, "Look at those $100 chips." She noticed a broken stack on the left side and moved them on top a stack on the right side. Gary, "Is that all you see?" Plaintiff, "Why don't you tell me what you want?" Gary, "Are you stupid?" Plaintiff, "Maybe I am. Read the Bell Curve." She finally noticed that a full stack of green chips

were between black chips.

38. Plaintiff then relieved the table next to James' table. Gary, with a smile on his face, told him that he had had a row of green chips between the black. There was no sarcasm, hostility, or rudeness when he spoke to James.

39. Exhibit H attached to this complaint is incorporated as if set out word for word. It is the termination document. It purports that a white supervisor, Steve Perry "ask" Plaintiff to size into the chips and she made unprofessional and unwelcome remarks. The gentleman stated, "Is that what they taught you in school?" Plaintiff responded, "Why not just tell me not to drop cut.?"

40. The other stated reason for termination was that white Gary asked Plaintiff to pay a bet. She made unwelcome comments to him. The supervisor asking the Plaintiff to pay a bet is a lie. The guest was coloring up a combination of $5.00, $2.50, and $1.00 chips. While in the process of breaking down and lining up the denominations, he rudely and sarcastically said before the guest, says, "Don't you know how much that is? $80.00. Take out $80.00." When the guest left, Plaintiff stated to him that he should not be supervising people. If she does something wrong, save his rude sarcasm and just write her up.

41. She was directed to go to the Table Games Office. Therein was Dan, a white supervisor, and Gary, the white complaining supervisor who was writing on some type of personnel action form. Dan's first words to Plaintiff were, "What is your problem? You can't tell a supervisor that he is not qualified to supervise." Plaintiff' responded that if he can opine as to her jobs and career choices and qualifications, then she should be able to do the same. Plaintiff went on to relate all the incidents of rudeness and sarcasm toward her and black guests. She was interrupted by Dan and told she would not receive any form, but was on investigatory supervision, and not to return until Mr. Lepre had talked to her.

42. Plaintiff was in a craps class, which was held between 4:00 p.m. and 6:00 p.m., to which she showed up for. Mr. Lepre appeared and called her away from the table. He told her

that she could not attend the class while on suspension, and that Plaintiff was to meet him on a given date and time in the Human Resources Office. Plaintiff queried why she could not continue in the craps class. Mr. Lepre responded, "Because I said so." Plaintiff queried what was being investigated. Mr. Lepre responded that she would be told at the appointed time.

43. As Exhibit 8 shows, Defendant has a multi-tiered disciplinary scheme. Your Plaintiff did not receive the benefit of any intermediate action.

44. A week or two before your Plaintiff's termination, a white employee walked off the job in the middle of her shift. She was not terminated.

45. About a month before your Plaintiff's termination, several of Defendant's supervisory personnel tested positive for drugs and or alcohol use; they were not terminated.

46. On information, Defendant has hired at least one white person as a dealer who had had no experience as a dealer, and had not been to dealer school. According to a woman who claimed to be her mother, some other employees taught her at their home.

47. Plaintiff has never been given any procedural manual or received instructions regarding the rules or interpretation of the rule allegedly violated by her.

48. That the actions taken against the Plaintiff are not consistent with sound business practices, and grossly out of proportion of white employees under similar circumstances.

49. That on information and belief, the table games section of the Defendants' organization has a systematic problem with regard to its disciplinary treatment of black dealers.

50. Plaintiff did receive a Right to Sue Letter for purposes of Title VII, but has misplaced the same.

RESERVATION OF RIGHTS

51. Plaintiff reserves the right to amend this complaint with additional relevant causes of action and factual assertions not limited to, but including claims based on State laws, other federal causes of action.

JURY DEMAND

52. Plaintiff demans a jury trial on all issues of fact.

PRAYER FOR RELIEF

53. Plaintiff prays that upon trial she be awarded:

a. Actual damages to which she shows herself entitled;

b. Punitive damages sufficient to give defendant pause and cause it to deliberate before it allows the conduct made the basis of this complaint to continue;

c. Any and all other relief in law and/or equity to which the plaintiff shows herself entitled.

s/Heather P. Hogrobrooks
Respectfully submitted,

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579 Byron Drive
Memphis, TN 38109
(901) 398-3280

Heather Patrice Hogrobrooks
579 Byron Drive
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hphjd@bellsouth.net

February 17, 2002

Magistrate Eugene M. Bogen
United States District Court
P. O. Drawer 1353
Greenville, MS 38702-1353

RE: Hogrobrooks v.Park Place,No.2:01cv022-P-B
Information Sheet

Dear Judge Bogen:

Enclosed is my pretrial information. I was directed also to submit jury instructions therewith, however as you know, jury instructions on racial discrimination are not pattern because of the various facts and circumstances which support claims thereunder. I re-read the rule regarding my time to submit same and being well within that time, felt it would be a more productive and less conflict producing endeavor in constructing same, after I received Defendant's pretrial information. The source for the instructions will, of course, rest upon decided federal cases and EEOC interpretive regulations.

I, too, would like to point out that I have received pleadings of the defendant requesting sanctions and partial summary judgment. I have not responded to the motion for sanction as I felt such response at this juncture would be futile given the fact that you had already told me that you were going to

impose sanctions for my tardiness to the settlement conference. More importantly, I have chosen to rest on the operation of normal summary judgment law with regard to the motion for summary judgment filed by the defendant, that is with specific regard to the fact that the motion received by me did not contain any affidavits or other support for the pleadings. Thus, if the Court's copies contained supporting documentations, I would like to have copies of same and thereafter be allowed to respond.

Respectfully,

s/Heather Patrice Hogrobrooks
Heather Patrice Hogrobrooks

cc: Mr. John Dunbar